forceable under the statute of frauds, and sued on a *quantum meruit* for the value of services rendered. *Held*, that the plaintiff cannot recover. *Collins* v. *Smith*, 44 Can. L. J. 163 (Ont., Div. Ct., Feb. 3, 1908).

It is generally held that one who abandons a contract cannot recover for a part performance of it. *Hapgood* v. *Shaw*, 105 Mass. 276. But, by the weight of authority, a plaintiff in default may recover for services rendered under an oral contract unenforceable by reason of the statute of frauds. *Bentley* v. *Smith*, 59 S. E. 720 (Ga.); *contra*, *Swanzee* v. *Moore*, 22 Ill. 63. The reason usually given is that the defendant should not be allowed to set up the void contract as a defense. *King* v. *Welcome*, 5 Gray (Mass.) 41. This position, however, seems inconsistent with the plaintiff's privilege of setting up the contract to raise an implied promise for his *quantum meruit*, and with the effect given to the contract in fixing his damages. If recovery is allowed, it would seem better to put it on the ground that the defendant would be unjustly enriched by being allowed to retain the benefit of the plaintiff's services without paying for them. Accordingly any damages caused by the plaintiff's failure to fully perform should be deducted from the amount allowed for his services. *Fuller* v. *Rice*, 52 Mich. 435.

RECEIVERS — LIABILITY FOR RECEIVERSHIP EXPENSES. — The plaintiff brought suit for the foreclosure and sale of the property of a quasi-public corporation. Upon the plaintiff's application a receiver was appointed pending final judgment in the suit. After a decree establishing the plaintiff's rights it was found that the assets of the corporation were insufficient to pay the expenses of the receivership. *Held*, that the plaintiff is not personally liable for the deficiency. *Atlantic Trust Co.* v. *Chapman*, 208 U. S. 360. See NOTES, p. 529.

SOVEREIGNS — ACTION BY TRUSTEE PROCESS AGAINST RAILWAY OWNED BY FOREIGN SOVEREIGN. — The plaintiff brought suit for a tort by trustee process in Massachusetts against an unincorporated railway in Canada owned by the Crown. *Held*, that the court has no jurisdiction. *Mason* v. *Intercolonial Ry. of Canada*, 83 N. E. 876 (Mass.).

The court considered the case as if it were a suit against a foreign sovereign. A similar case was discussed in 17 HARV. L. REV. 270, 348.

STATUTES — INTERPRETATION — EFFECT OF SPECIAL SAVING CLAUSE ON GENERAL SAVING STATUTE. — The defendant was convicted of paying rebates in violation of the first section of the Elkins Act which had been superseded by the Hepburn Act. The offenses were committed prior to the enactment of the latter. The Hepburn Act expressly repeals all statutes or parts of statutes in conflict with its provisions. It contains an express saving clause mentioning only pending causes, and providing that such causes "shall be prosecuted to conclusion in the manner heretofore provided by law." § 13 of the United States Revised Statutes provides that "the repeal of any statute shall not have the effect to release any penalty incurred under such statute unless the repealing act shall so expressly provide." *Held*, that the conviction is valid. *Great Northern Ry. Co.* v. *United States*, 208 U. S. 452.

For a discussion of a previous decision reaching the same result, see 20 HARV. L. REV. 502.

SURETYSHIP — SURETY'S RIGHT OF SUBROGATION — SUBROGATION TO RIGHTS OF PRINCIPAL. — The B Company became surety on the statutory bond given by A, a contractor on government work, for the performance of the contract and the payment of laborers and materialmen. A completed the work, but B had to pay to laborers more than the amount due to the contractor and retained by the government under the contract. *Held*, that B is entitled to the fund retained by the government. *Henningsen* v. *U. S. Fidelity and Guaranty Co.*, 208 U. S. 404.

It is fundamental in the law of suretyship that a surety discharging the obligation of his principal is subrogated to the rights of the creditor against the principal. And the surety has also the right, equally well recognized but not